

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Central Illinois Light Company

)

Docket No. ER02-708-000

**COMMENTS OF THE
ILLINOIS COMMERCE COMMISSION**

I. INTRODUCTION AND BACKGROUND

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211, the Illinois Commerce Commission ("ICC") hereby submits its comments in the above-captioned proceeding in response to a filing submitted by the Central Illinois Light Company ("CILCO").

On January 7, 2002, CILCO tendered for filing with the Federal Energy Regulatory Commission (hereinafter "the Commission") revised transmission rates to be effective through Attachment O of the Midwest Independent System operator's Open Access Transmission Tariff (hereinafter "MISO OATT") as well as a new tariff, the Ancillary Service Tariff. Specifically, CILCO's filing sets forth the following proposals: (1) to revise CILCO's transmission rates; (2) to revise the rates and terms for Ancillary Services in CILCO's current Open Access Transmission Tariff (OATT) Schedules (2, 3, 5 and 6) to better reflect the current costs of providing these services; (3) to establish the factor for calculating Real Power Losses on CILCO's transmission system for service under the Midwest ISO's OATT under CILCO's Schedule 7A; and (4) to establish Schedule 8A for Power Factor Correction Service.¹ CILCO

¹ CILCO Transmittal Letter (dated January 3, 2002) at 1.

has asked for waiver of the FERC's 60-day notice requirement and requested that its proposal become effective on February 1, 2002 (the same date the MISO has proposed to begin operations under the Midwest ISO OATT).

CILCO primarily serves electric customers throughout a 4,500 square mile area of central Illinois. CILCO is a member of the Midwest ISO, which had been scheduled to begin operations under the Midwest ISO OATT. CILCO had also previously filed a petition with the ICC on June 22, 2001 in Docket No. 01-0465 for purposes of delineating transmission and distribution facilities to support its state Delivery Services Tariff. CILCO's Delivery Services Tariffs were filed with the ICC in Docket No. 01-0637 on October 2, 2001. Both matters are pending a final ruling by the ICC. The Commission issued a Notice of Filing in this proceeding on January 10, 2002 which set the comment due date on January 28, 2002. On January 25, 2002, the ICC filed its Notice of Intervention along with Motion For an Extension of Time requesting an extension to file its Comments on February 6, 2002.

II. SUMMARY OF ICC RECOMMENDATION

The ICC recommends that the Commission dismiss CILCO's proposed modifications/additions regarding ancillary services, transmission loss recovery, and power factor correction service, without prejudice, on the basis that they are patently deficient due to numerous errors, contradictions, and insufficiently explained proposals. The Commission can make such a determination without prejudice to CILCO re-filing its ancillary services and loss factor proposals once the problems identified herein have been corrected. The ICC also recommends that the Commission suspend CILCO's transmission rate proposal for the maximum period of time permitted under the Commission's rules and schedule a technical

conference in either Chicago or Springfield, Illinois to resolve the disputes with that portion of CILCO's filing. Alternatively, CILCO's transmission rate filing can be held in abeyance until such time as the ICC completes its proceeding and issues a final Order in ICC Docket No. 01-0465.

III. DISCUSSION

The ICC recommends that the Commission dismiss CILCO's January Filing because the proposals it contains are patently deficient for vagueness and ambiguity. Section 35.5 of the Commission's rules and regulation permit the Commission to "reject any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this part, or the Commission's rules of practice and procedure."²

The Commission has in the past rejected as "patently deficient" any application or filing that fails in any material respect either to comply with the Commission's substantive requirements or to supply the required information necessary to consider the application or filing on its merits. See *Consumers Power Co.*, 47 FERC ¶61, 283 at pp. 62,001-02, reh'g denied, 48 FERC ¶61, 113 (1989). See also *Texas Eastern Transmission Corp.*, 45 FERC ¶61, 246 at p. 61,725 (1988), reh'g denied, 46 FERC ¶61, 034 (1989)(rejection for failure to specify the precise methodologies to calculate a charge); *Detroit Edison Co.*, 44 FERC ¶61, 294 at p. 62,062(1988)(rejection where applicant provided "no cost support whatsoever"). As the ICC will illustrate, *infra*, CILCO has failed to demonstrate good cause for its waiver request of the Commission's 60 day notice requirement for new rates to take effect. More importantly, CILCO's filing is plagued by several deficiencies, ambiguities, and contentions unsupported by

² 18 C.F.R. § 35.5 (2001).

any evidence. As a result, the ICC respectfully requests the Commission act on CILCO's filing consistent with the ICC's recommendations contained herein.

A. CILCO's Request for Waiver of FERC Rules

CILCO requests that the Commission waive the 60-day notice requirement in order to allow the filing to become effective on February 1, 2002, the Midwest ISO's Operations Date.³ In connection with its request for waiver, CILCO notes that it “. . . has been working to coordinate the effective date of its Transmission and Ancillary Service rates at FERC with the unbundled rates that it is developing in Illinois, the revised return on equity filing for Midwest ISO transmission service made in Docket No. ER02-485-000.”⁴ CILCO asserts its belief that “the public interest will be served by coordinating the effective date of its proposed rates in this filing with the effective date of the MISO OATT.”⁵

In *Central Hudson Gas & Electric Corporation, et al.*,⁶ the Commission stated that companies must file rate increases at least sixty days before the proposed effective date unless the applicant makes a strong showing of good cause. The ICC recommends that the Commission deny CILCO's request for waiver of the 60-day notice requirement because good cause for the granting of the waiver has not been demonstrated by CILCO.

CILCO has requested that a waiver be granted for both its proposed transmission rates as well as its proposed ancillary service rates.⁷ In her filed testimony, however, CILCO witness Bilsland does not provide any support for CILCO's request for waiver concerning the proposed

³ Transmittal Letter at 9.

⁴ Id. at 9.

⁵ Id. at 9.

⁶ 60 FERC ¶61, 106 reh'g denied, 61 FERC ¶61, 089 (1992).

⁷ Exhibit CILCO-1 at 6.

transmission rates. Nor does Ms. Bilsland provide any evidence that the current CILCO ancillary services rates are inconsistent with the form of rates being used by the other MISO Transmission Owners. Ms. Bilsland's testimony is also devoid of any support for her contention that the form of ancillary services rates must be consistent across the MISO. Additionally, although CILCO asserts its belief "... that the public interest will be served by coordinating the effective date of its proposed rates herein with the effective date of the Midwest ISO's OATT,"⁸ no specific explanation is provided as to how exactly CILCO's request for a February 1, 2002 effective date and subsequent waiver of the Commission's 60-day notice requirement is in the public interest in this instance. In short, the Commission should deny all of CILCO's varied waiver requests because CILCO has failed to demonstrate good cause in support thereof.

B. CILCO's Transmission Rates Proposal

CILCO's transmission rate proposal set forth in this filing is premature and fails to justify the proposed rate increases. The Commission should, therefore, suspend CILCO's transmission rate proposal for the maximum period of time permitted under the Commission's rules and schedule technical conferences to resolve the disputes with that portion of CILCO's filing. Alternatively, the rate filing can be held in abeyance until such time as the ICC completes its work and issues a final Order in ICC Dkt. 01-0465.

CILCO contends that its proposed transmission rate changes are necessary to better reflect CILCO's cost of providing transmission and ancillary services.⁹ In addition, CILCO states that the rate formula set forth in Attachment O of the Midwest ISO OATT is not compatible with the detailed cost classification study filed by CILCO in ICC Docket No. 01-

⁸ Transmittal Letter at 9

⁹ Exhibit CILCO-2 at 9.

0465 and thus it is necessary for CILCO to file its own transmission service rates to ensure proper cost recovery.¹⁰ Finally, in addition to the transmission rate base additions and ancillary service rate increases, CILCO seeks the same 13.00% rate of return on common equity as that sought by the Midwest ISO and the Midwest ISO Transmission Owners in ER02-485.¹¹

Section 5 of Schedule 7 and Schedule 8 of the MISO tariff provides as follows:

The formula in Attachment O shall be used to establish rates for each zone unless the Commission allows a modification to the formula, a new formula, or different rates to be used for a zone or zones. In such event, the rates for the affected zone or zones shall reflect the Commission accepted changes and be included in the calculation of the single system-wide rates in accordance with Attachment O, p. 2 of 2, lines 23-27.¹²

As an initial matter, the ICC points out that CILCO's transmission rate filing in this proceeding is voluntary. No aspect of FERC's RTO policy or the Midwest ISO proposal requires CILCO to make this type of rate filing. In filed testimony intended to support CILCO's transmission rate proposal, CILCO witness Bilsland asserts, "It is necessary for CILCO to file its own transmission service rates to ensure proper recovery of costs."¹³ It is not clear what this statement means because there appears to be no prohibition on CILCO filing "its own transmission service rates" using the formula rate method included in the Midwest ISO's Appendix O and CILCO has made no demonstration that application of that formula would result in improper recovery of costs. CILCO's filing provides no justification for an alternative to the MISO Attachment O rate calculation process. Neither has CILCO specifically requested that

¹⁰ Exhibit CILCO-1 at 4.

¹¹ Transmittal Letter at 4.

¹² Midwest ISO OATT, First Revised Volume 1, Second Revised Sheet No. 131.

¹³ Exhibit CILCO-1 at 4.

FERC “accept” its alternative transmission rate formula as provided in the above-cited portion of the MISO OATT.

CILCO’s cover letter states that CILCO’s request for revised transmission rates is based on the testimony of witnesses Blake and Getz.¹⁴ Witness Blake, however, only provides two paragraphs of testimony to support the transmission rate portion of CILCO’s filing.¹⁵ Such conclusory testimony can hardly be considered sufficient to support a major transmission rate change such as that proposed by CILCO.

CILCO witness Bilsland also testifies that, “the underlying cost support used to develop the charges for CILCO’s transmission service and ancillary services must be consistent with the re-classification of plant and associated costs filed by CILCO with the ICC.”¹⁶ CILCO does not believe that the rate formula currently set forth in Attachment O of the MISO OATT is compatible with the detailed cost classification study filed by CILCO in ICC Docket No. 01-0465.¹⁷ Despite these assertions, no CILCO witnesses specifically identify the alleged incompatibility in their respective testimony. CILCO’s filing simply fails to sufficiently identify the specific elements of the cost classification study filed by CILCO in the ICC case that make it incompatible with the method of calculating transmission rates in Attachment O.

CILCO witness Bilsland’s testimony also describes the CILCO proceeding that is currently pending before the ICC as “affect[ing] the rate filing made in this case.”¹⁸ Although CILCO may propose some of the same cost allocations in the two proceedings, witness Bilsland concedes that its transmission rate proposal in this FERC proceeding does not reflect CILCO’s

¹⁴ Transmittal Letter at 2.

¹⁵ Exhibit CILCO-2 at 16.

¹⁶ Exhibit CILCO-1 at 4.

¹⁷ Exhibit CILCO-1 at 4.

¹⁸ Exhibit CILCO-1 at 3.

cost allocation proposal in the ICC case with respect to application of the seven-factor test.¹⁹ The ICC, therefore, believes it to be improper for CILCO to attempt to justify its cost allocation proposals contained in its transmission rate proposal before the Commission on the basis of its cost allocation proposals currently pending before the ICC.

Although CILCO witness Bilsland states that CILCO plans to “file revised transmission rates under Section 205” once the ICC has made its seven-factor test determination for CILCO,²⁰ CILCO has failed to adequately explain why it cannot wait for the ICC’s final determination before asking the Commission to accept its transmission rate proposal.

Since the ICC’s final decision in the seven-factor test proceeding may “affect” CILCO’s transmission rate filing, the ICC recommends that CILCO’s transmission rate proposal be suspended for the maximum period of time permitted under the Commission’s rules and that technical conferences be scheduled to resolve the disputes with that portion of CILCO’s filing. Alternatively, the rate filing can be held in abeyance until such time as the ICC completes its work and issues a final Order in ICC Dkt. 01-0465.

CILCO has also failed to sufficiently justify its request for a return on equity (ROE) of 13%. CILCO is basing its request “ . . . on the evidence and testimony supporting that return filed in ER02-485-000 by the Midwest ISO and the Midwest ISO Transmission Owners, including CILCO.”²¹ This ROE request by CILCO is inappropriate and must be rejected by the Commission.²² The return on equity request in docket ER02-485-000 is firmly tied to using the formula rate approach for calculating transmission rates as specified in the Midwest ISO’s

¹⁹ *Id.* at 5.

²⁰ *Ibid.*

²¹ Transmittal Letter at 4.

²² The ICC notes that CILCO has provided no evidence and made no showing that a 13% return on equity is appropriate for generation-related ancillary services rates, even if it is ultimately found to be appropriate for MISO’s provision of transmission service.

Appendix O. CILCO has provided no evidence to support the same ROE allowance for transmission rates based upon a fixed test year. Indeed, while annual application of the MISO formula rate approach will lead directly to lower transmission rates each year as the annual depreciation allowance is reflected in transmission rates (all other things being held constant), CILCO's fixed test year approach will maintain CILCO's transmission rates at a level higher than the other Midwest ISO transmission owners until CILCO files a new transmission rate case at some unidentified time in the future. Consequently, it may be appropriate to use a lower ROE in a case such as this where a fixed historical test year rate approach is being proposed.

Exhibit CILCO-9 is CILCO's transmission rate worksheet in this proceeding. There are numerous problems with Exhibit CILCO-9. First, CILCO does not disclose the source of the data used in the preparation of Exhibit CILCO-9. Second, the number used as the denominator (984,000kW in this case) is mislabeled. The denominator is labeled "Demonstrated Capability."²³ The correct denominator in this worksheet should be identified as "Historical 12CP Transmission Load." CILCO has used 984,000kW as the denominator in several of its ancillary service rate worksheets and properly describes this in testimony as "CILCO's 12-month average coincident peak demands for 2000".²⁴ That same label should apply here in the transmission worksheet.

Finally, in order to properly allocate costs, the denominator in this rate formula must also include all firm uses of CILCO's transmission system. It is not clear that the number that CILCO applies in Exhibit CILCO-9 includes the use of CILCO's transmission system for purposes of sales for resale.

²³ Exhibit CILCO-9 at 1, ln. 1.

²⁴ Exhibit CILCO-2 at 14.

C. CILCO's Ancillary Services Proposal

CILCO's January filing also proposes new ancillary services and rates to replace the ancillary services portion of CILCO's existing OATT. Specifically, CILCO proposes to establish a new ancillary services tariff for Schedules 2, 3, 4A, 5, and 6.²⁵ CILCO states that its revised Ancillary Services rates are based on a cost study using test year 2000 data.²⁶ Also, under the proposal, CILCO would flow through the actual cost that it pays for any ancillary service that CILCO is obligated to provide which is acquired through a third party. In addition to the cost of the third-party ancillary service, CILCO proposes to add an additional 10% to recover administrative costs.²⁷

CILCO's filing states that the MISO will act as CILCO's agent regarding the provision of ancillary services to transmission customers.²⁸ Such a provision is in direct contradiction with specific language in Section 3 of MISO's OATT authorizing MISO to act as the transmission customer's agent exclusively. The MISO's OATT identifies three options for Transmission Customers to obtain needed ancillary services:

The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the appropriate Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5 and 6) from a third party or by self-supply when technically feasible.²⁹

Under customer option (i) here, the Midwest ISO will be acting as the Transmission Customer's agent for the purpose of acquiring needed ancillary services. Under customer options (ii) and (iii), there is no agency relationship at all. Under none of these three options will the Midwest ISO serve as CILCO's agent as incorrectly stated at page 2 of CILCO's cover letter.

²⁵ Transmittal Letter at 3.

²⁶ Transmittal Letter at 3.

²⁷ Transmittal Letter at 4.

²⁸ Transmittal Letter at 2.

²⁹ *Id.*

The language contained in CILCO's proposed Ancillary Services Tariff misstates CILCO's role in the provision of transmission service once the MISO becomes operational. CILCO's proposal appears to have the effect of allowing CILCO to retain authority over certain aspects of transmission ancillary service provisioning despite the fact that the MISO has already been granted this authority via the FERC approved MISO OATT. This contradiction exposes CILCO's fundamental misunderstanding regarding its role in the provision of ancillary services once the MISO begins transmission service operations and, if implemented, would result in inconsistencies throughout the entire AST portion of the CILCO filing.

In addition to the foregoing, Section 3 of the MISO OATT provides that,

Each Transmission Owner (and User, where applicable), with the ability to provide any or all of these ancillary services shall offer to provide such services (with respect to loads within its control area) under cost-based schedules unless market-based rates have been accepted for filing at the Commission.

This means that CILCO, as a transmission owner, must provide ancillary services to the Midwest ISO when requested. This will allow the Midwest ISO to fulfill its commitment established in Section 3 of the MISO tariff (transmission customer option (i) described above) to "have the Transmission Provider act as its agent." It also imposes an obligation on CILCO, as a transmission owner that is a control area operator, to stand ready to provide ancillary services so that effect can be given to the transmission customer option (ii) provided for in the MISO tariff and described above. The design of CILCO's proposed ancillary services tariff, however, does not appear to be consistent with either of these two requirements placed on CILCO by the Midwest ISO OATT.

Additionally, CILCO proposes to charge the higher of either the proposed ancillary services rate or 110% of the purchase price if CILCO is required to acquire ancillary services through a third party. CILCO states that the 10% charge will allow CILCO to "recover an

administrative charge of 10% of the cost of this third-party Ancillary Service.”³⁰ This provision appears in Schedules 3, 5, and 6 of CILCO’s proposed AST.³¹

The ICC opposes CILCO’s proposed method of pricing ancillary services for several reasons. First, the 10% adder is inappropriate because the Midwest ISO has an obligation to acquire ancillary services on behalf of its transmission customers on a least-cost basis. Accordingly, the need for CILCO to incur administrative costs to purchase third-party supply to forward to Midwest ISO would be avoided if Midwest ISO would simply obtain the third-party supply directly.

Second, such a provision is in violation of Order No. 888, where the Commission concluded, “rates for ancillary services should be cost-based and established as price caps from which transmission providers may offer a discount to reflect cost variations or to match rates available from any third party”.³² In an attempt to justify the 10% surcharge, CILCO cites an interconnection agreement between CILCO and Central Illinois Public Service. However, the Commission considered and approved the interconnection agreement in 1995, prior to the issuance of Order No. 888. In addition, Order No. 888’s *pro forma* tariff ancillary service schedules 3, 4, 5 and 6 requires transmission providers acquiring these ancillary services from a third party to pass through the cost of these services to the transmission customer. The *pro forma* tariff does not include a provision for the utility to mark-up the cost of acquiring ancillary services for transmission customers.

Third, approval of CILCO’s proposed 10% adder provides strong incentives for abuse by both CILCO and generators. For example, CILCO is currently planning to transfer its generation

³⁰ Transmittal Letter at 4.

³¹ Exhibit CILCO-2 at 16.

³² Order No. 888 at 251.

assets to an affiliate.³³ Approval of the 10% adder would result in CILCO's affiliate providing ancillary services to CILCO at a higher price than if CILCO were to own the generators themselves. Similarly, the adder would provide other generators with a legal incentive to collude together to raise the customer's purchase price by 10% for capacity sold as ancillary services. In short, CILCO's proposed 10% ancillary services adder is detrimental to transmission customers and runs counter to the Commission's objectives of lower transmission rates through the RTO paradigm. As a result, the Commission should reject CILCO's 10% ancillary service adder.

Another defect in CILCO's filing is that throughout its ancillary services rate worksheets (Exhibit CILCO-4, Exhibit CILCO-5, Exhibit CILCO-6, Exhibit CILCO-7), the denominator is labeled "Demonstrated Capability." As shown *supra*, that label is incorrect. The denominator in these rate worksheets should be identified as "Historical 12CP Transmission Load." CILCO also uses an incorrect number for the denominator in the rate formula for Operating Reserve-Supplemental Reserve Service.³⁴ CILCO uses 57,600kW as the denominator where the number that CILCO should be using is 984,000kW. This is in contradiction to the cover letter where CILCO states that the rate was calculated by dividing CILCO's proposed annual revenue requirement for Operating Reserve-Supplemental Reserve Service and dividing it by CILCO's 12-month average coincident peak (12-CP) demand of 984,000kW.³⁵ CILCO also uses 984,000kW in the remaining rate worksheets. This error dramatically increases the rate that CILCO proposes to charge for this service. Correction of this error results in the proposed charge of \$0.5147 per kW-hour being reduced to \$0.0317 per kW-hour and accounts for virtually

³³ See *ICC Docket No. 01-0792* (Proceeding pursuant to Section 16-111(g) of the Public Utilities Act concerning proposed transfer of generation assets to a subsidiary and entry into related agreements).

³⁴ CILCO Exhibit-7 at 1.

³⁵ Transmittal Letter at 8.

the entire ancillary services rate increase proposed by CILCO. Consequently, the Commission should not allow this rate to go into effect even if it is subject to later refund.

(1) Specific Comments on Proposed Ancillary Services Tariff Language

Section 1. Definitions

CILCO's definition of "Ancillary Services" improperly implies that CILCO is the transmission operator. This is improper because the Midwest ISO is the transmission operator. CILCO's proposed tariff defines "Ancillary Services" as follows: "Those services provided under this Tariff that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Service Provider's Transmission System in accordance with Good Utility Practice."³⁶ This term should be defined as follows: "Those services defined as ancillary services in the Midwest ISO OATT."

CILCO's definition of "Application" also creates a misrepresentation about the identity of the entity actually providing service—CILCO or the Midwest ISO—as well as what services are being provided. CILCO's proposed tariff defines "Application" as "A request by an Eligible Customer for Ancillary Service pursuant to the provisions of the Midwest ISO Tariff and this Tariff."³⁷ This definition is improper because it does not clearly delineate and distinguish between the MISO OATT and the CILCO specific tariff. Requests for service under the MISO tariff must be made to MISO and requests for service under CILCO's tariff must be made to CILCO. CILCO's tariff must be consistent with that of MISO.

³⁶ Appendix 1 at 5.

³⁷ *Ibid.*

The ICC notes that CILCO's proposed definition of "Completed Application" suffers from the same problem as does the definition of "Application."³⁸

CILCO's proposed definition of "Service Customer" excludes the Midwest ISO from being a service customer.³⁹ This too is erroneous. The Midwest ISO will be the principal customer of CILCO's ancillary services tariff.

CILCO's proposed definition of "Service Agreement" relegates the Midwest ISO merely to the role of agent of CILCO.⁴⁰ This too is improper as explained above. Also, the reference in this definition to "Transmission Service under the Midwest ISO Tariff" is misplaced because, as explained *supra*, the Midwest ISO will not be an agent of CILCO.

CILCO's proposed definition of "Transmission System" also misstates CILCO's proper role with respect to the transmission system after the Midwest ISO begins operations.⁴¹ CILCO proposes to define "Transmission System" as being, "[t]he facilities owned, controlled or operated by the Service Provider that are used by the Midwest ISO to provide Transmission Service in the Service Provider's Control Area under the Midwest ISO Tariff." After Midwest ISO start-up, control and operation of the transmission system will shift from CILCO to the Midwest ISO.

Section 2. Allocation of Ancillary Service

It is unclear what the term "existing capability" refers to in Section 2 and what "terms of the Midwest ISO Tariff" are being referenced.

³⁸ *Id.*

³⁹ *Id.* at 10.

⁴⁰ *Ibid.*

⁴¹ *Id.* at 11.

Section 3. Ancillary Service

The first paragraph of this Section is improper in a tariff of an entity, such as CILCO, that is not also the transmission service provider. Transmission customers' requirements with respect to ancillary services are covered in MISO OATT. Under this proposed language, Paragraph 1 conflicts with the transmission customers' requirements as stated in the MISO OATT. As a result, the first paragraph should be deleted in its entirety.

The second paragraph of this Section is improper in a tariff of an entity, such as CILCO, that is not also the transmission service provider. The second paragraph is improper because the requirements for providers of ancillary services are stated in the MISO OATT. Paragraph 2 here conflicts with those stated requirements in the MISO OATT. As a result, this second paragraph should also be deleted in its entirety.

The third paragraph of this Section is improper in a tariff of an entity, such as CILCO, that is not also the transmission service provider. The third paragraph is improper because it is irrelevant to CILCO's circumstances. The paragraph deals with the circumstance in which CILCO is not a control area operator. CILCO, however, is a control area operator. If CILCO's control area operator status should change in the future, an appropriate modification could then be made to CILCO's tariff. However, because it is currently not relevant, and there is no evidence that it will become relevant in the foreseeable future, this third paragraph should be deleted in its entirety.

The second sentence in the 5th paragraph in Section 3 should be modified as follows:

Three principal requirements apply to discounts for Ancillary Services provided by the Service Provider ~~in conjunction with its provision of transmission service~~ as follows:

As explained above, once the Midwest ISO begins operations, CILCO (defined here as the “Service Provider”) will not be providing transmission service.

On proposed Original Sheet No. 15, the reference to “Scheduling, System Control and Dispatch Service” should be deleted because the Midwest ISO will be providing that service, not CILCO.

Section 4. Billing and Payment

Section 4.1 should be revised as follows:

All billing and payment terms and procedures for service provided under this Tariff shall be governed by the terms of ~~the Midwest ISO Tariff where the Midwest ISO is acting as the Service Provider’s Designated Agent for this purpose~~this Tariff.

As previously explained above, CILCO’s proposal designating the Midwest ISO as CILCO’s agent is improper. Rather, the Midwest ISO will be CILCO’s primary customer under CILCO’s proposed ancillary services tariff. Accordingly, the billing and payment terms of CILCO’s tariff should be self-contained within CILCO’s tariff.

Section 6. Dispute Resolution Procedures

Section 6.1 of CILCO’s proposed ancillary services tariff establishes the Midwest ISO’s Dispute Resolution Procedures as providing the mechanism for relief for any “dispute between a Service Customer and the Service Provider.” This arrangement is improper. CILCO must put in place a dispute resolution process separate from that of the MISO. This is especially important given that the Midwest ISO will be the primary customer under CILCO’s tariff.

Section 7. Ancillary Service

The last sentence in Section 7.1 should be modified as follows:

In the event of a conflict between the terms in those two Tariffs, the terms ~~in~~of the Midwest ISO Tariff shall apply.

The ancillary services terms and conditions of the Midwest ISO OATT must predominate because the Midwest ISO is the transmission service provider.

Section 7.2 should be modified as follows:

Conditions Required of Customers: Ancillary Services shall be provided by the Service Provider only if all the conditions are satisfied by the Customer as contained in ~~the Midwest ISO Tariff and~~ this Tariff, as they may be amended from time to time.

The Midwest ISO, not CILCO, must be solely responsible for ensuring that customers satisfy the conditions specified in the Midwest ISO tariff.

Schedule 2: Reactive Supply and Voltage Control from Generation Sources Service

The first sentence of the first paragraph should be deleted because it is not CILCO's responsibility to "maintain transmission voltages on the Service Provider's transmission facilities." This is the Midwest ISO's responsibility.

The second sentence of the first paragraph should be deleted because it is the Midwest ISO's responsibility—not CILCO's—to establish which ancillary services must be associated with a transmission transaction.

The third sentence of the first paragraph should be deleted because it is the Midwest ISO's responsibility—not CILCO's—to establish the amount of ancillary services that must be associated with each transmission transaction.

The second sentence in the second paragraph should be deleted because it is direct contradiction with a provision in the MISO OATT Schedule 2. This sentence in CILCO's proposed tariff states, "The Transmission Customer must purchase this service from the Service Provider [CILCO] or the Control Area operator [CILCO]." However, the corresponding sentence in the Midwest ISO's Schedule 2 states, "The Transmission Customer must purchase this service from the Transmission Provider [Midwest ISO]."

Schedule 3: Regulation and Frequency Response Service

The fifth sentence in the first paragraph should be deleted because it is in direct contradiction with a provision in the MISO OATT Schedule 3. This sentence in CILCO's proposed tariff states, "The Transmission Customer must either purchase this service from the Service Provider [CILCO] or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation." However, the corresponding sentence in the Midwest ISO's Schedule 3 states, "The Transmission Customer must either purchase this service from the Transmission Provider [Midwest ISO] or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service Purchase Obligation, as defined below."

The last paragraph of CILCO's proposed Schedule 3 provides that CILCO will charge the higher of its posted rate or its purchase price plus 10% when CILCO "must purchase capacity from a third-party" to meet its responsibilities. As argued above, this paragraph should be deleted in its entirety.

Schedule 5: Operating Reserve - Spinning Reserve Service

The fourth sentence in the first paragraph should be deleted because it is direct contradiction with a provision in the MISO OATT Schedule 3. This sentence in CILCO's proposed tariff states, "The Transmission Customer must either purchase this service from the Service Provider [CILCO] or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation." However, the corresponding sentence in the Midwest ISO's Schedule 5 states, "The Transmission Customer must either purchase this service from the Transmission Provider [Midwest ISO] or make alternative comparable arrangements to satisfy its Spinning Reserve Service Purchase Obligation, as defined below."

The last paragraph in Schedule 5, concerning the 10% adder, should be deleted in its entirety as explained above in response to the same provision in CILCO's proposed Schedule 3.

Schedule 6: Operating Reserve - Supplemental Reserve Service

Comments for this schedule parallel the same Comments provided above in response to Schedule 5.

D. CILCO's Physical Transmission Loss Recovery Proposal

CILCO's January filing contains a loss recovery provision for physical transmission losses. (See Schedule 7A—Loss Recovery Under Regional Loss Methodology). It is not clear exactly what purpose CILCO's proposed Schedule 7A serves. According to CILCO, "Schedule 7A was filed on November 30, 2001 in Docket No. ER02-438 as part of a filing to establish the transmission loss factors that will be used for each Midwest ISO Transmission Owner in connection with the loss recovery methodology of the Midwest ISO."⁴² Similarly, CILCO's own proposed Schedule 7A states, "Point-to-Point Transmission Service and Network Integration Transmission Service using the Service Provider's [CILCO's] transmission facilities will be arranged through the Midwest ISO under the Midwest ISO Tariff on file with the FERC." If these two statements are true, then there appears to be no reason for Schedule 7A in CILCO's proposed tariff. Unless CILCO can provide the Commission with compelling reasons to retain Schedule 7A, it should be deleted in its entirety.

E. CILCO's Power Factor Correction Service Proposal

CILCO includes as part of its filing Schedule 8A—Power Factor Correction Service. Schedule 8A proposes to establish a new schedule for power factor correction service.

⁴² Transmittal Letter at 8.

According to CILCO, the charge is necessary to prevent transmission customers with a power factor lower than CILCO's from being denied transmission service.⁴³

It is not clear what purpose CILCO proposed Schedule 8A intends to serve. CILCO's cover letter states, "because the charges for firm transmission service, non-firm transmission service and network integration transmission service are all billed on a kW basis, a charge for Power Factor Correction Service is necessary."⁴⁴ However, nowhere does CILCO explain the relationship between charging on a kW basis and the alleged need to "charge for Power Factor Correction Service."

CILCO also states that its currently effective OATT requires a transmission customer to "maintain a power factor within the same range as the Transmission Provider [which is currently CILCO]."⁴⁵ CILCO proposes to retain this same language in its Schedule 8A. Once the Midwest ISO begins operation of the transmission system, however, CILCO will no longer be the transmission provider—that role will be taken over by the Midwest ISO. Consequently, the only applicable conditions on power factor quality for transmission service will be those specified in the Midwest ISO OATT.

CILCO attempts to justify its proposed power factor correction service by citing to the Commission's February 9, 2000 Order in First Energy Operating Companies. But in that case, First Energy was the transmission provider. In this case CILCO will not be the transmission provider—that role will be performed by the Midwest ISO. Consequently, the First Energy case is not applicable precedent for CILCO's power factor correction service proposal.

Additionally, CILCO's proposal to impose a power factor range (.95 lagging and .99 leading) on transmission customers is inappropriate. If the Commission indeed determines that

⁴³ Transmittal Letter at 8.

⁴⁴ Transmittal Letter at 8.

⁴⁵ CILCO Exhibit-2 at 17.

imposition of a power factor range is appropriate, that range should be adopted and made part of the Midwest ISO OATT. CILCO goes on to state that “The monthly charge of \$0.04 per kVar is imposed for delivery at either transmission or distribution voltages.”⁴⁶ Once the MISO begins operations, CILCO will no longer be the transmission service provider and as a result, the imposition of such a charge that is not included in the MISO OATT by CILCO to customers taking delivery at transmission voltages is inappropriate. Moreover, including an additional customer charge for delivery at distribution voltages in a FERC-filed tariff is inappropriate because of the absence of FERC jurisdiction over such distribution-related service. If CILCO wishes to offer a voluntary power factor correction service to transmission customers seeking alternative ways of conforming with a power factor quality range established by the Midwest ISO for transmission service, then CILCO should modify its proposed Schedule 8A accordingly. If CILCO wishes to offer a voluntary power factor correction service to customers taking delivery at distribution level voltages, then CILCO should file such a request with the Illinois Commerce Commission.

IV. CONCLUSION

WHEREFORE, for each of the aforementioned reasons, the Illinois Commerce Commission respectfully requests that the Commission dismiss, without prejudice to re-filing, CILCO’s proposals with regards to: (1) ancillary services; (2) physical transmission loss recovery; and, (3) power factor correction service. The ICC also requests that the Commission suspend CILCO’s transmission rate proposal and schedule technical conferences to resolve the disputes with that portion of CILCO’s filing. In the alternative, the Commission can hold

⁴⁶ Appendix 1 at 45.

CILCO's transmission rate filing in abeyance until such time as the ICC completes its proceeding and issues a final Order in ICC Docket No. 01-0465.

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Respectfully submitted,

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